

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW MEXICO

FILED
NOV 28 2006
CLERK OF DISTRICT COURT
DISTRICT OF NEW MEXICO

JH

ERIC D. KRAUS

VS.

NATIONAL RAILROAD
PASSENGER CORPORATION

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§§
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CIVIL ACTION NO. 06-1157
JURY

06 NOV 28 PM 3:15

CIV - 06 - 1157

RHS DJS

PLAINTIFF'S ORIGINAL COMPLAINT

Eric D. Kraus would respectfully show the Court and Jury the following:

Jurisdiction

1. This action arises under 45 U.S.C. §§ 51-60, commonly referred to as the Federal Employers' Liability Act. Therefore, Federal Question Jurisdiction exists under 28 U.S.C. §1331.

Venue

2. Venue is proper under 45 U.S.C. § 56 and/or 28 U.S.C. §1331(b), as Defendant resides in this District, or a substantial part of the events or omissions giving rise to the claim occurred in this district, or Defendant is doing business in this District at the time this action was commenced.

Parties

3. Eric D. Kraus, Plaintiff, is a resident of Albuquerque, New Mexico.
4. National Railroad Passenger Corporation, Defendant, is a railroad corporation. Defendant may be served with process by serving Alicia Serfaty, Corporate Secretary and Legal Counsel, 60 Massachusetts Avenue, NE, Washington, DC 20002.

The Cause of Action

5. On or about the 28th day of January, 2004, Plaintiff was performing duties for Defendant when he was injured in a baggage car on an interstate train.

6. The occurrence referred to above, and the resulting injuries to Plaintiff, were directly and proximately caused by:

- a. the negligence of the officers, agents or employees of Defendant;
- b. defects and insufficiencies that were due to Defendant's negligence, in the train and baggage car of Defendant; and
- c. Defendant's negligent failure to provide Plaintiff with a safe place to work.

7. This action against Defendant Railroad arises under 45 U.S.C. §§ 51-60, commonly referred to as the Federal Employers' Liability Act.

8. Defendant Railroad was a common carrier by railroad engaged in interstate commerce through and between several states or territories at all times relevant to this suit.

9. Plaintiff was an employee of Defendant Railroad, was in the course and scope of employment and was employed by Defendant Railroad to further Defendant Railroad's above described activities of commerce between any of the several states or territories, at all times relevant to this suit.

The Damages

10. As a result of the aforesaid, Plaintiff has:

- a. sustained bodily injuries;
- b. incurred, and will incur, medical expenses;
- c. incurred lost wages and/or a loss of earning capacity;
- d. experienced, and will experience, physical pain and mental anguish;
- e. experienced physical impairment.

11. By reason of the above, Plaintiff is entitled to recover damages from Defendant in a reasonable amount to be set by the jury, but which the Court may limit to \$975,000.00.

JURY DEMAND

12. Plaintiff demands a trial by jury.

PRAYER

For the reasons given above, Plaintiff prays for judgment against Defendant in a reasonable amount to be set by the jury, but which the Court may limit to \$975,000.00; for post-judgment interest at the legal rate; for costs of Court; and for such other relief to which Plaintiff is entitled.

Respectfully submitted,

FOSTER & RIEDER

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